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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/506,803

01/14/2005

Robert Lange

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EXAMINER

HARVEY, JULIANNA NANCY

ART UNIT

PAPER NUMBER

3733

MAIL DATE

DELIVERY MODE

10/07/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/506,803	Applicant(s) LANGE, ROBERT	
	Examiner Julianna N. Harvey	Art Unit 3733	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 23 September 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: _____.
- Claim(s) objected to: _____.
- Claim(s) rejected: 13-24.
- Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☒ Other: See Continuation Sheet.

/Eduardo C. Robert/
 Supervisory Patent Examiner, Art Unit 3733

/J. N. H./
 Examiner, Art Unit 3733

Continuation of 13. Other: The rejection of claims 13-24, as indicated in the 24 April 2009 Office Action, is upheld. With respect to Applicant's arguments regarding the depression (pages 3-4), the examiner respectfully points out that, as stated in the Office Action (see page 3), McMillin teaches a connecting device made of a harder material than the implant. Because the connecting device is made of a harder material, one could tighten the connecting device against the implant enough to create at least a minimal depression in the implant. With respect to Applicant's arguments regarding the friction (page 3), the examiner respectfully points out that when tightening the connecting device against the implant, there would be an increase in friction between the contacting surfaces of the implant and the connecting device (this is applicable to both Kambin and McMillin). With respect to Applicant's argument that one would also have to include the recess of McMillin to Kambin (pages 4-5), the examiner respectfully points out that McMillin states that the recess helps prevent splitting of the plate (col. 4, lines 23-27). The use of the word "help" indicates that the recess contributes to the prevention of splitting but does not necessarily mean, as Applicant seems to indicate, that it is critical to the prevention of splitting. McMillin states that the fibers resist splitting and bending (col. 2, lines 4-10), not the fibers and the recess. Thus, the fibers can achieve the function on their own; the recess merely provides further reassurance against splitting. Furthermore, McMillin only shows one shape of a plate. Thus Applicant's argument that "every illustrative example of utilizing the composite materials in a bone plate includes the spherical recess" and "when the composite material is used in a bone plate to resist splitting, such a composite material has a spherical recess" (page 5) is unsupported by the disclosure of McMillin. For the reasons stated above, and because the modifications to Kambin were provided with support found in McMillin, if there was dissection and reconstruction in piecemeal fashion as alleged by Applicant (page 5), there was at least support to do so. Regarding Applicant's argument that the locking feature is attained by the combination of several features (the shape of the slot, the hardness of the materials, and the alignment of the fibers) (pages 5-6), the examiner respectfully points out that claim 13 states that "said connecting device is operative to squeeze and lock the longitudinal implant into position both by depression caused by a squeezing and increased friction between the harder material of the connecting device and the composite material of the longitudinal implant". Nowhere in claim 13 is it recited that the locking feature is attained by the combination of features alleged by Applicant.